**FTAA NEGOTIATING GROUP ON SERVICES**
**Public Summary of U.S. Position**

**Scope**: The United States defines the scope of the services chapter of the FTAA Agreement as applying to cross-border supply of services but maintains that investment to supply services is more appropriately addressed under the investment chapter of the FTAA Agreement. The United States believes that the scope and coverage of the services chapter of the FTAA Agreement should be comprehensive and should cover, in principle, all service sectors and service suppliers. The U.S. definition of cross-border services includes three ways of supplying a service: from the territory of one Party into another Party; in the territory of one Party by a person of that Party to a person of another Party; and by a national of a Party in the territory of another Party. The United States has proposed an illustrative list of measures that would fall under a cross-border services chapter.

The U.S. believes that FTAA countries should negotiate liberalization according to a top-down ("negative list") approach, whereby all sectors are liberalized except where a particular FTAA country negotiates a reservation for a particular sector or measure. We support this as an approach that is both ambitious, but provides the flexibility that all FTAA countries, including the United States, require to address domestic sensitivities.

Within this general framework, the United States believes the services chapter should cover measures taken by central, regional or local governments and authorities as well as non-governmental bodies in the exercise of powers delegated by such governments or authorities, recognizing that discussion will continue on the possibility of establishing specific provisions for sub-national measures. The United States will continue to consult fully with U.S. state and local governments on the latter issue.

The United States excludes services supplied "in the exercise of governmental authority" - - which we define as any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers - - from the services chapter of the FTAA Agreement. In conjunction with this, the United States has made clear that in areas related to social services - including education and healthcare services - the United States is not seeking nor would we agree to use the FTAA negotiations to promote privatization of such public services. The United States excludes immigration policy and access to employment markets from the scope of the services chapter of the FTA Agreement. The United States also excludes government procurement of services from the services chapter of the FTAA Agreement, believing that this is more appropriately addressed under the government procurement chapter of the FTAA Agreement. The United States has indicated that it supports excluding air transport services, but could include certain services related to air transport, under the services chapter of the FTAA Agreement.

The United States has indicated the need to identify, where appropriate, supplementary disciplines for specific sectors, and that specialized provisions need to be developed for financial services. It is the U.S. view that such disciplines and provisions would be most effectively pursued in a combined fashion for both the services and investment chapters of the FTAA Agreement.

**Most-favored-nation treatment and national treatment:** The United States position on most-favored nation (MFN) treatment spells out that MFN treatment means treatment that is no less favorable than the treatment a Party to the FTAA Agreement provides, in like circumstances, to service suppliers of another country, whether or not that country is a Party to the FTAA Agreement. The provision is intended to address both *de jure* and *de facto* discrimination. While we believe that the terminology "like circumstances" and the World Trade Organization (WTO)/General Agreement on Trade in Services formulation of "like services/like suppliers" are both intended to address the same concern and, in our view, should not lead to a different result in treatment, we believe that the phrase "in like circumstances" more precisely addresses the issues and would allow different treatment for service suppliers depending on the relevant particular circumstances.

We believe that MFN treatment should apply, in principle, to all service sectors and service suppliers. However, we recognize that FTAA countries may need flexibility for a limited number of sectors or measures. We maintain that such flexibility should not be extended to broad preferences such as might be accorded in a bilateral or regional free trade agreement.

The United States supports these same principles with regard to national treatment. The United States believes that national treatment is an integral part of the development of a hemispheric free trade agreement and should apply, in principle, to all service suppliers. In our view, national treatment would mean treatment that is no less favorable than the treatment an FTAA country provides, in like circumstances, to its own service suppliers. National treatment obligations also should be interpreted as addressing both *de jure* and *de facto* discrimination. We recognize that FTAA countries may need flexibility for a limited number of sectors or measures.

**Market access:** The U.S. view is that MFN and national treatment are important but insufficient by themselves to ensure effective market access for service suppliers. Therefore, we seek additional "market access" provisions to complement MFN and national treatment and ensure that a full liberalization package is achieved. The United States market access text draws on various sources, including Western Hemisphere trade agreements and the World Trade Organization/General Agreement on Trade in Services. We have included material from Western Hemisphere trade agreements where such text appeared more appropriate in the context of developing a chapter devoted exclusively to cross-border services.

The U.S. market access position provides for an obligation for an FTAA Party to: 1) remove non-discriminatory quantitative restrictions; 2) guarantee access to and use to publicly-provided telecommunications networks; and 3) not to impose local presence requirements (for example, a representative office or any form of company) in its territory as a condition for the cross-border provision of a service. The "no local presence" commitment notes that specialized provisions may be needed for financial services. We recognize that countries may need flexibility for a limited number of sectors or measures in terms of applying the obligations relating to non-discriminatory quantitative restrictions and local presence requirements. We are continuing to develop the U.S position on the

"access and use" discipline in connection with telecommunications-specific negotiations. We also recognize that the NGSV may decide at a later date that access to other services networks may need to receive similar prominence in the services chapter of the FTAA Agreement.

**Transparency:** The United States believes that transparency is a basic principle underlying trade liberalization and should be included as a discipline under the services chapter of the FTAA Agreement. The United States has indicated that it would need further time for reflection on this matter, including whether it would be sufficient to address transparency in general provisions of the FTAA. As a general consideration, the United States believes that FTAA countries should promote the widest possible application of transparency commitments in domestic regulation of services. These should include disciplines on the advance notification of proposed regulations and solicitation of comments from interested parties. With regard to applying regulations, where a license or qualification is required to provide a service, FTAA countries should address obligations to specify and make publicly available measures relating to the criteria to obtain such a license or qualification and the terms and conditions under which it is offered or revoked. The United States believes that, where feasible, it would be appropriate for FTAA governments to make administrative licensing procedures publicly available.

The United States also views the establishment and active operation of national contact points within the FTAA countries as an extremely important part of transparency obligations.

**Denial of benefits:** The United States proposes to deny the benefits of the FTAA to 1) "shell companies" or 2) to companies that are directly or indirectly owned by investors from non-FTAA countries with which the United States does not maintain diplomatic relations, or to which it is applying economic sanctions. We have tabled a definition of "company" in connection with this provision.

**Other Issues:** The United States believes that the issue of domestic regulation is important and will be giving further consideration to what provisions on domestic regulation might be appropriate. This will involve close consultation with all U.S. interested parties.

The United States believes that several other issues also are important and will require more reflection to determine what provisions might be appropriate, keeping in mind that some issues might be addressed in general provisions of the overall FTAA Agreement. Such cross-cutting issues could include general exceptions, a national security exception, transparency, taxation, certain definitions.